SUPREME COURT OF THE UNITED STATES.

No. 64.

CHARLES A. DAVIS, PLAINTIFF IN ERROR,

VERSUS

ISAAC PACKARD, HENRY DISDIER, & WILLIAM MORPHY.

IN ERROR TO COURT FOR THE CORRECTION OF ERRORS OF THE STATE OF NEW YORK.

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The answer of the President of the Senate of the State of New York, the Senators, Chancellor, and Justices of the Supreme Court of the said State, being the Judges of the court for the correction of errors, holden in and for the said State of New York, within named.

The record, process, and proceedings of the plaint, whereof mention is within made, with all things concerning the same, I certify to the Supreme Court of the United States, at the day and place within contained, in a certain schedule to this writ annexed, as within I am commanded.

o pay to the said Andrew Kincannon all costs that he incur in the defence thereof, and may be legally awarded against them, the said L. W. R. Phillips, Nancy and Sally Head, then the above obligation to be void, otherwise to remain in full force and virtue.

THOMAS TRIPLETT, [SEAL.]

UNITED STATES OF AMERICA, *7th circuit court, Kentucky district*, sct.

I, John H. Hanna, clerk of the 7th circuit court of the United States of America in and for the district of Kentucky, do hereby certify, that the foregoing pages contain a full, true, and complete transcript of the record and proceedings in the cause therein mentioned.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said court, this 25th day of June, in the year of Lord one thousand eight hundred and thirty, and in the fifty-fourth year of the independence of the United States of America.

[L. S.] JOHN H. HANNA

SUPREME COURT OF THE UNITED STATES.

No. 64.

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The answer of the President of the Senate of the State of New York, the Senators, Chancellor, and Justices of the Supreme Court of the said State, being the Judges of the court for the correction of errors, holden in and for the said State of New York, within named.

The record, process, and proceedings of the plaint, whereof mention is within made, with all things concerning the same, I certify to the Supreme Court of the United States, at the day and place within contained, in a certain schedule to this writ annexed, as within I am commanded.

In witness whereof, I have caused the seal of the court for the correction of errors, to be hereunto affixed, this sixth day of January, one thousand eight hundred and thirty-one, and of the independence of the United States the fifty-fifth.

EDWD. P. LIVINGSTON, *President.* [L. S.]

JOHN F. BACON,
Clerk of the Court for the Correction of Errors.

UNITED STATES OF AMERICA, ss.

The President of the United States of America to the President of the Senate, Senators, and Chancellor of the State of New York, Judges of the court for the correction of errors of the said State, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, or some of you, between Charles A. Davis, plaintiff in error, and Isaac Packard, Henry Disdier, and William Morphy, defendants in error, manifest error hath happened, to the great damage of the said Charles A. Davis, as by his complaint appears: we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf; do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, in the District of Columbia, on the second Monday of January next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness, the honorable John Marshall, esquire, chief justice of the Supreme Court of the United States, this first Monday of August, in the year of our Lord one thousand eight hundred and thirty, and of the independence of the United States the fifty-fifth.

FRED. J. BETTS, [L. S.]
Clerk of the Southern District of New York.
ANDW. S. GARR, *Attorney.*

By the Honorable Smith Thompson, esquire, one of the Justices of the Supreme Court of the United States, to Isaac Packard, Henry Disdier, and William Morphy, and their attorney or attorneys.

Whereas, Charles A. Davis, by Andrew S. Garr, his attorney, lately issued out of the circuit court of the United States for the southern district of New York, in the second circuit, a writ of error, returnable to the Supreme Court of the United States, directed to the president of the Senate, senators, and chancellor of the State of New York, judges of the court of the said State, for the correction of errors, stating, that in the record and proceedings, as also in the rendition of the judgment, of a plea in the said court for the correction of errors, between the said Charles A. Davis, plaintiff in error, and you the said Isaac Packard, Henry Disdier, and William Morphy, defendants in error, manifest error hath happened, to the great damage of the said Charles A. Davis.

And whereas, for the correction of that error, in due manner, the said writ has been issued, returnable at the next term of the Supreme Court of the United States, at the city of Washington, in the District of Columbia, on the second Monday of January next; you are, therefore, hereby cited to appear before the said Supreme Court of the United States, at the city of Washington, in the District of Columbia, on the twenty-ninth day of January next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, in the second circuit, the tenth day of December, in the year of our Lord one thousand eight hundred and thirty, and of the independence of the United States the fifty-fifth.

SMITH THOMPSON. [L. S.]

Writ of Error.

The proper bond having been executed, I allow the within writ, and do order that no execution upon the within mentioned judgment be issued; or if an execution shall have been issued, that proceedings thereon be stayed until judgment shall be rendered on the within writ of error, dated May 31, 1830.

JNO. T. IRVING,
First Judge of the Court of Com. Pleas for the city & county of New York.

The people of the State of New York to our justices of our Supreme Court of Judicature, greeting:

Because, in the record and proceedings, and, also, in the giving of judgment in a plaint which was in our said court before you, by bill without our writ, between Isaac Packard, Henry Disdier, and William Morphy, survivors of William C. Gowen, plaintiffs, and Charles A. Davis, defendant, in a plea of debt, as it is said, manifest error hath intervened, to the great damage of the said Charles A. Davis, as by his complaint we are informed; we being willing that the error, if any there be, should, in due manner, be corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do command you that if judgment be thereupon given, then you cause a transcript of the record of the judgment aforesaid, and all things concerning the same, to be brought before the President of the Senate, the senators, and the chancellor, at the next meeting of the court for the trial of impeachments and the correction of errors, wherever the same shall be held, and this writ: that the record and proceedings aforesaid being duly inspected, we may further cause to be done, what, of right, and according to the law and custom of the State of New York, ought to be done.

Witness, William M. Oliver, esq., President of the Senate at the city of Albany, the twentieth day of April, in the year one thousand eight hundred and thirty, 1830.

JOHN F. BACON, *Clerk.* [L. S.]
AND'W S. GARR, *Attorney.*

The answer of the Justices of the Supreme Court of Judicature of the people of the State of New York, in the within writ mentioned.

The record, whereof mention is within made, with all things concerning the same, are hereby respectfully certified to the President of the Senate, senators, and chancellor within mentioned, in a certain schedule to this writ annexed, as within it is commanded.

Witness John Savage, esquire, chief justice of our said Supreme Court at the city of New York, the first day of September, in the year 1830.

JAS. FAIRLIE. [L. S.]

SUPREME COURT.

Pleas in the Supreme Court of Judicature of the people of the State of New York, before the justices of the same court, of the term of January, in the year of our Lord one thousand eight hundred and thirty, at the Capitol, in the city of Albany.

CITY AND COUNTY OF NEW YORK, ss.

Isaac Packard, Henry Disdier, and William Morphy, survivors of William C. Gowen, deceased, put in their place David Dudley Field, their attorney, against Charles A. Davis, of a plea of debt on recognizance.

CITY AND COUNTY OF NEW YORK, ss.

Charles A. Davis puts in his place Andrew S. Garr, his attorney, at the suit of Isaac Packard, Henry Disdier, and William Morphy, survivors of William C. Gowen, deceased, of the plea aforesaid.

CITY AND COUNTY OF NEW YORK, ss.

Be it remembered, that on the first Monday of January aforesaid, Isaac Packard, Henry Disdier, and William Morphy, survivors of William C. Gowen, deceased, came before the justices of the supreme court of judicature of the people of the State of New York, by David Dudley Field their attorney, and brought here into the said court their bill against Charles A. Davis, being in custody, &c. of a plea of debt on recognizance, and there are pledges for the prosecution, to wit: John Doe and Richard Roe, which said bill follows, in these words, to wit:

CITY AND COUNTY OF NEW YORK, ss.

Isaac Packard, Henry Disdier, and William Morphy, survivors of William C. Gowen, deceased, by David Dudley Field, their attorney, complain of Charles A. Davis, defendant in this suit, being in custody, &c. of a plea that the said defendant render unto the said plaintiffs four thousand five hundred and thirty-eight dollars and twenty cents, lawful money of the United States of America, which to the said plaintiffs the said defendant owes, and from them unjustly detains. For that, whereas, the said defendant heretofore, to wit: in August term, in the year of our Lord one thousand eight hundred and twenty-four, at the academy in Utica, came into the supreme court of judicature of the people of the State of New York, before the justices thereof, in his proper person, and became pledged and bail for one Thomas Hill, junior, impleaded with Ralph Haskins, at the

suit of the said plaintiffs, in a plea of trespass on the case then pending in the said court, in manner and form following, that is to say: that if it should happen that the said Thomas Hill, who was impleaded with one Ralph Haskins, should be convicted at the suit of the said plaintiff, the said William C. Gowen, then living, in the plea aforesaid, then the said defendant consented that the damages which should be adjudged to the said plaintiffs, and the said William C. Gowen in that behalf, should be made of his goods and chattels, lands and tenements, and levied to the use of the said plaintiffs; and the said William C. Gowen, if it should happen that the said Thomas Hill, junior, should not pay to the said plaintiffs, and the said William C. Gowen the said damages, or render himself, on that occasion, into one of the prisons of the people of the State of New York, as by the record thereof still remaining in the said court, more fully appears. And the said plaintiffs say, that afterwards, to wit: in May term, in the year one thousand eight hundred and twenty-nine, to wit, at the City Hall, in the city of New York, and in the court aforesaid, the said plaintiffs, by the consideration and judgment of the said court, recovered in the said plea against the said Thomas Hill, junior, and Ralph Haskins, the sum of five thousand five hundred and thirty-eight dollars and twenty cents, which, by the said court, was then and there adjudged to the said plaintiffs, and the said Wm. C. Gowen for the damages which they had sustained, as well by reason of the non-performance of certain promises and undertakings of the said Thomas Hill, junior, and Ralph Haskins, as for their costs and charges by them about their suit in that behalf expended, whereof the said Thomas Hill, junior, and Ralph Haskins were convicted as by the record and proceedings thereof still remaining in the said court, in full force and effect, more fully appears. And the said plaintiffs in fact say, that neither the said Thomas Hill, junior, nor the said Ralph Haskins has yet paid to the said plaintiffs the said damages as adjudged to the said plaintiffs and the said Gowen as aforesaid, or any part thereof; nor hath the said Thomas Hill, junior, rendered himself, on that occasion, into one of the prisons of the said people, according to the tenor and effect of the said recognizance; and the said plaintiffs in fact say, that neither the said plaintiffs and the said Gowen, in his life time, nor the said plaintiffs since his death, have obtained any execution of the said judgment, nor sued out any execution upon the aforesaid recognizance, which the said judgment so recovered as aforesaid, is still in full force, strength, and effect, wholly unsatisfied; whereby, an action hath accrued to the said plaintiffs to have and demand of the said defendant the said sum of money above demanded, according to the tenor and effect of the said recognizance. Nevertheless, the said defendant, (although often requested, &c.) hath not yet paid to the said plaintiffs and the said Gowen in his life time, nor the said plaintiffs since his death, the said sum of money, or any part thereof; but the same, or any part thereof, to pay, the said defendant hath hitherto wholly refused, and still doth refuse, to the damage of the said plaintiffs, of one hundred dollars; and therefore the said plaintiffs bring suit, &c. And the said Charles A. Davis, defendant in this suit, by Andrew S. Garr, his attorney, comes and defends the wrong and injury, when, &c., and says that he does not owe the sum of money above demanded, or any part thereof, in manner and form as the said plaintiffs have above thereof complained against him; and of this he puts himself upon the country, and the said plaintiffs do the like, &c. And, for a further plea in this behalf, the defendant, by leave of the court here for this purpose first had and obtained, ac-

cording to the form of the statute in such case made and provided, says, that the said plaintiffs ought not to have or maintain their aforesaid action thereof against him, &c., because, he says, that there is not any record of the said supposed recovery, in the said declaration mentioned, remaining in the said supreme court of judicature of the people of the State of New York, before the justices thereof, in manner and form as the said plaintiffs have above in their said declaration alleged, and this he the said defendant is ready to verify; wherefore, he prays judgment if the said plaintiffs ought to have and maintain their aforesaid thereof against him, &c.

And for a further plea in this behalf, the said defendant, by like leave of the court here for this purpose, first had and obtained, according to the form of the statute in such case made and provided, says, that the said plaintiffs ought not to have or maintain their aforesaid action thereof against him; because he says that at the time of the said supposed recovery in the said declaration mentioned, and long before the said William C. Gowen, one of the persons who are above supposed to have recovered, in the said plea against the said Thomas Hill, junior, and Ralph Haskins, the sum of money above mentioned, was dead, and that there was not, at the time of the said supposed recovery, any such person in being as the said William C. Gowen, as in and by the aforesaid declaration is above supposed, and this he, the said defendant, is ready to verify; wherefore, he prays judgment, if the said plaintiffs ought to have or maintain their aforesaid action thereof against him, &c.

And for a further plea in this behalf, the said defendant, by like leave of the court here for this purpose, first had and obtained, according to the form of the statute in such case made and provided, says, that the said plaintiffs ought not to have or maintain their aforesaid action thereof against him; because, he says, that, after the recovery of the said judgment, as in the said declaration mentioned, and before the exhibiting of the bill of the said plaintiffs against him, the said defendant in this behalf, there was no writ of capias ad satisfaciendum duly sued and prosecuted out of the said court of the said people, before the justices thereof, against the said Thomas Hill, junior, at the suit of the said plaintiffs upon the said judgment, and duly returned in the said court, as, according to law, and the custom and practice of the said court from time immemorial, used and approved in the said court before the commencement of this suit, there ought to have been, and that he, the said defendant, is ready to verify; wherefore, he prays judgment, if the said plaintiffs ought to have or maintain their aforesaid action thereof against him, &c.

And for a further plea in this behalf, the said defendant, by like leave of the court here for this purpose, first first had and obtained, according to the form of the statute in such case made and provided, says, that the said plaintiffs ought not to have or maintain their aforesaid action thereof against him; because, he says, that, after the recovery of the said judgment in the said declaration, and before the return of any writ of capias ad satisfaciendum, thereupon duly sued or prosecuted out of the said court of the said people, before the justices thereof, against the said Thomas Hill, junior, at the suit of the said plaintiffs upon the said judgment, to wit: on the first day of December, in the year of our Lord one thousand eight hundred and twenty-nine, he, the said Thomas Hill, junior, died, to wit, at Gibraltar, in Spain, that is to say, at the city of New York, at the first ward of the said city, and in the county of New York, and this he, the said defendant, is ready to ve-

rify; wherefore, he prays judgment, if the said plaintiffs ought to have or maintain their aforesaid action thereof against him, &c.

And the said plaintiffs, as to the plea of the said defendant, by him secondly above pleaded, say, that they, by reason of any thing in that plea alleged, ought not to be barred from having and maintaining their aforesaid action thereof against the said defendant; because, they say, that there is a record of the said recovery in the said declaration mentioned *mentioned,* remaining in the said supreme court of judicature of the people of the State of New York, before the justices thereof, as the said plaintiffs have above, in their said declaration, alleged, and this the said plaintiffs are ready to verify, by the said record, when, where, and in such manner, as the court here shall direct; and they pray that the said record may be seen and inspected by the court; and because the said court are not yet advised what judgment to give of and upon the premises, a day is, therefore, given to the parties aforesaid, before the justices aforesaid, until the first Monday of May next, to hear judgment thereupon, for that the said court here are not yet advised thereof, &c.

And the said plaintiffs, as to the plea of the said defendant, by him thirdly above pleaded, say, that they, by reason of any thing in that plea alleged, ought not to barred from having and maintaining their aforesaid action thereof against the said defendant; because, they say, that, at the time of the said recovery in the said declaration mentioned, the said William C. Gowen, one of the persons who recovered, in the said plea against the said Thomas Hill, junior, and Ralph Haskins, the sum of money above mentioned, was not dead, and that there was, at the time of the said recovery, such a person in being as the said William C. Gowen; and this the said plaintiffs pray may be inquired of by the country, and the said defendants doth the like, &c.

And the said plaintiffs, as to the plea of the said defendant, by him fourthly above pleaded, say, that they, by reason of any thing in that plea alleged, ought not to be barred from having and maintaining their aforesaid action thereof against the said defendant; because, they say, that, after the recovery of the said judgment, as in the said declaration mentioned, and before the exhibiting of the bill of the said plaintiffs against the said defendant in this behalf, there was a writ of capias ad satisfaciendum duly sued and prosecuted out of the said court of the said people, before the justices thereof, against the said Thomas Hill, junior, at the suit of the said plaintiffs upon the said judgment, and duly returned into the said court, as, according to law, and the custom and practice of the said court from time immemorial, used and approved in the said court before the commencement of this suit, then ought to have been; and this the said plaintiffs pray may be enquired of by the country, and the said defendant doth the like, &c.

And the said plaintiffs, as to the plea of the said defendant, by him fifthly above pleaded, say, that they, by reason of any thing in that plea alleged, ought not to be barred from having and maintaining their aforesaid action thereof against the said defendant; because they say, that, after the recovery of the said judgment, and before the return of the said writ of capias ad satisfaciendum, thereupon duly sued and prosecuted out of the said court of the said people, before the justices thereof, against the said Thomas Hill, junior, at the suit of the said plaintiffs upon the said judgment; the said Thomas Hill, jr., did not die in manner and form as the said defendant hath above, in the said plea in that behalf, alleged. And that the said plaintiffs pray may be inquired of by the country, and the said defendant doth the like, &c.

Therefore, the issues above joined to be tried by the country, are ordered by the said supreme court to be tried at the circuit court, appointed to be held at the City Hall of the city of New York, in and for the said city and county of New York, on the second Monday of March next.

And now at this day, to wit: the first Monday of May, in the year of our Lord one thousand eight hundred and thirty, before the justices of the supreme court of judicature, at the place last aforesaid, come the said Isaac Packard, Henry Disdier, and William Morphy, survivors of William C. Gowen, deceased, by David Dudley Field, their attorney aforesaid; and the said Charles A. Davis, by Andrew S. Garr, his attorney aforesaid; and the record aforesaid being seen and inspected by the court here, it sufficiently appears to the same court, that there is a record of the said recovery in the said declaration mentioned, remaining in the said supreme court of judicature of the people of the State of New York, before the justices thereof, as the said plaintiffs have above in their said declaration alleged; and the said circuit judge of the first circuit, before whom the said issues were tried, hath sent hither his record had before him, in these words, to wit:

Afterwards, that is to say, on the day and at the place last within mentioned, before the honorable Ogden Edwards, circuit judge of the first circuit, come the parties within mentioned, by their attorneys within mentioned, and the jurors of the jury within mentioned, being summoned, also come, who, to speak the truth of the matters within contained, as within required, being chosen, tried and sworn, say, upon their oaths, as to the issue first within joined, that the said defendant does owe the sum of money within demanded, in manner and form as the said plaintiffs have within thereof complained against him.

And as to the issue thirdly within joined, that, at the time of the said recovery in the said declaration mentioned, the said William C. Gowen, one of the persons who, in the said plea against the said Thomas Hill, junior, and Ralph Haskins, the sum of money above mentioned, was not dead.

And as to the fourth issue within joined, that, after the recovery of the said judgment, as in the said declaration mentioned, and before the exhibiting of the bill of the said plaintiffs against the said defendant in this behalf, there was a writ of capias ad satisfaciendum duly sued and prosecuted out of the said court of the said people, before the justices thereof, against the said Thomas Hill, junior, at the suit of the said plaintiffs upon the said judgment, and duly returned in the said court, as according to law and the custom and practice of the said court, from time immemorial used and approved of in the said court, before the commencement of this suit, there ought to have been.

And as to the fifth issue within joined, that, after the recovery of the said judgment, and before the return of the writ of capias ad satisfaciendum, thereupon duly sued and prosecuted out of the said court of the said people, before the justices thereof, against the said Thomas Hill, junior, at the suit of the said plaintiffs upon the said judgment, the said Thomas Hill, junior, did not die, in manner and form as the said defendant hath within, in the said plea, in that behalf alleged.

And they assess the damages of the said plaintiffs, by reason of the detaining of the within debt, over and above their costs and charges, by them about their suit in this behalf expended, to six cents, and for those costs and charges to six cents.

Therefore, it is considered that the said Isaac Packard, Henry Disdier,

and William Morphy, survivors of William C. Gowen, deceased, do recover against the said Charles A. Davis their said debt, and also their damages aforesaid, to twelve cents, by the said jury, in form aforesaid assessed, and also for their said costs and charges by the court now here adjudged, of increase to the said Isaac, Henry, and William, and with their assent, to four hundred and sixty-eight dollars and ninety-one cents, which said damages, costs, and charges, in the whole, amount to four hundred and sixty-nine dollars and nine cents. And the said Charles A. Davis, in mercy, &c.

Judgment signed this 31st of May, A. D. 1830.

JNO. T. IRVING.

Endorsed: Supreme Court, Isaac Packard, Henry Disdier, William Morphy, survivors of William C. Gowen, deceased, *vs.* Charles A. Davis.

Judgment record.

D. D. FIELD, *Plaintiffs' Attorney.*

Filed May 31st, 1830, 1 o'clock.

JAS. FAIRLIE, *Clerk.*

STATE OF NEW YORK.

Pleas in the court for the correction of errors, held at the Capitol in the city of Albany, on the twenty-eighth day of December, in the year of our Lord one thousand eight hundred and thirty, before the President of the Senate, the senators, and chancellor of this State.

JOHN F. BACON, *Clerk.* [L. S.]

CHARLES A. DAVIS,
vs.
ISAAC PACKARD, HENRY DISDIER, & WILLIAM MORPHY.

Be it remembered, that, on the second day of September, in the year of our Lord one thousand eight hundred and thirty, the transcript of the record and process between the parties aforesaid, of the plea aforesaid mentioned, with all things touching the same, on pretext of a certain writ of error prosecuted in the premises therein mentioned by the said Charles A. Davis, were transmitted from the supreme court of judicature of this State before the court here for the correction of errors. And the aforesaid Charles A. Davis appearing, by his counsel, in the same court for the correction of errors on the said second day of September, in the year aforesaid, did assign certain matters for errors in the said record and process aforesaid, for reversing and annulling the judgment aforesaid of the said supreme court, in the words following, to wit:

"Afterwards, to wit: on the first day of September, in the year of our Lord one thousand eight hundred and thirty, before the President of the Senate, senators, and chancellor of the State of New York, in the court for the correction of errors, at the City Hall of the city of New York, comes the said Charles A. Davis, by Andrew S. Garr, his attorney, and says, that, in the record and proceedings aforesaid, and, also, in the giving the judgment aforesaid, there is manifest error in this: that he, the said Charles A. Davis, before and at the time of the commencement of the suit of the said Isaac Packard, Henry Disdier, and William Morphy, against him, the said Charles

A. Davis, was, and ever since hath continued to be, and yet is, Consul General of his Majesty the King of Saxony, in the United States, duly admitted and approved as such by the President of the United States. That, being such, he ought not, according to the constitution and law of the United States, to have been impleaded in the said supreme court, but in the district court of the United States for the southern district of New York, or in some other district court of the said United States; and that the said supreme court had not jurisdiction, and ought not to have taken to itself the cognizance of the said cause: therefore, in that there is manifest error. And this he, the said Charles A. Davis, is ready to verify: wherefore, he prays that the judgment aforesaid, for the error aforesaid, may be revoked, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the judgment aforesaid."

To which the said Isaac Packard, Henry Disdier, and William Morphy, likewise appearing, by his counsel, in the same court for the correction of errors, on the twenty-second day of September, in the year last aforesaid, filed their plea to the errors assigned in the words following, to wit:

"And the said Isaac Packard and others, defendants in error, before the President of the Senate, senators, and chancellor of the State of New York, in the court for the correction of errors, at the City Hall of the city of New York, by David Dudley Field, their attorney, come and say, that there is no error in the record and proceedings aforesaid, nor in the giving of the judgment aforesaid; because they say, that it no where appears, by the said record, proceedings, or judgment, that the said Charles A. Davis ever was Consul of the King of Saxony; and they pray that the said court for the correction of errors may proceed to examine the record and proceedings aforesaid, and the matters aforesaid above assigned for error, and that the judgment aforesaid may be, in all things, affirmed. But because the court aforesaid is not yet advised what judgment to give of and concerning the premises, a day, therefore, is given to the said parties here, wheresoever, &c. to hear their judgment thereon, for that the said court is not yet advised thereof."

Whereupon, the said court for the correction of errors, after having heard the counsel for both parties, and diligently examined and fully understood the causes assigned for error, and inspected the record and process aforesaid, did order and adjudge that the judgment of the supreme court be, in all things, affirmed; that the plaintiff take nothing by his writ, and that the defendants go without day; that the defendants in error recover against the plaintiff in error their double costs in defending the writ of error in this cause, to be taxed, and, also, interest on the amount recovered, by way of damages, and that the record be remitted, &c.

Therefore, it is considered by the said court for the correction of errors, that the judgment of the supreme court aforesaid, be, and the same is hereby in all things affirmed. It is further considered that the said defendants in error, recover against the plaintiff in error their double costs, according to the statute in such case made and provided, to be taxed in defending the writ of error in this cause, and also interest on the amount recovered, by way of damages. And hereupon, the record aforesaid, as also the proceedings aforesaid in this same court for the correction of errors in the premises had, are to the said Supreme Court, wheresoever the same may be held, remitted, &c.

Thereupon, a writ of error having been prosecuted by the plaintiff in er-

ror, out of the Supreme Court of the United States, in this cause: it is ordered that, unless the defendants in error shall make up the record in this cause, within twenty days, the plaintiff in error be at liberty to do so. And that certified copies of the record and proceedings be attached to the record in this court; and that the same be certified in return to such writ of error, under the seal of this court, and the signatures of the president and clerk of this court.

JOHN F. BACON, *Clerk.*

No. 24.

IN THE

Circuit Court of the United States of America,

HOLDEN IN AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA,

Of April Sessions, in the year of our Lord One Thousand Eight Hundred and Thirty.

EASTERN DISTRICT OF PENNSYLVANIA, *To wit:*

The Grand Inquest of the United States of America enquiring for the Eastern District of Pennsylvania, upon their oaths and affirmations respectfully do present, That James Porter, otherwise called James May, late of the Eastern District aforesaid, yeoman, and George Wilson, late of the Eastern District aforesaid, yeoman, on the sixth day of December, in the year of our Lord one thousand eight hundred and twenty-nine, at the Eastern District aforesaid and within the jurisdiction of this Court, with force and arms in and upon one Samuel McCrea, in the peace of God and of the United States of America then and there being, and then and there being a carrier of the Mail of the United States, and then and there entrusted therewith, and then and there proceeding with the said Mail from the city of Philadelphia to the borough of Reading, feloniously did make an assault, and him the said Samuel McCrea in bodily fear and danger then and there feloniously did put, and the said Mail of the United States from him the said Samuel McCrea

then and there feloniously, violently and against his will, did steal, take and carry away, contrary to the form of the Act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

And the Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, That the said James Porter, otherwise called James May, and the said George Wilson, afterwards, to wit, on the same day and year aforesaid, at the Eastern District aforesaid and within the jurisdiction of this Court, with force and arms in and upon the said Samuel McCrea, then and there being a carrier of the Mail of the United States and then and there entrusted therewith, feloniously did make an assault, and him the said carrier of the said Mail then and there feloniously, violently, and against his will did rob, contrary to the form of the Act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

G. M. DALLAS, *Att'y of the U. S. for the East'n Dist. of Penns.*

1830. April 26. The said James Porter, alias James May, and George Wilson, being severally arraigned, plead Not Guilty; and of this, &c. The Att'y U. S. similiter; and therefore, &c.

1830. May 27. The prisoners withdraw their plea of Not Guilty, and plead Guilty.

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1830. October 20. Dist. Att'y moves for judgment against George Wilson. The Court, doubting their power, direct proceedings to be suspended till next session.

UNITED STATES,
District of Pennsylvania, } *Sct.*

I certify the foregoing to be a true and faithful copy of the original Indictment against James Porter, alias James May, and George Wilson, for "Robbery of Mail, Reading," filed and now remaining amongst the Records of the Circuit Court of the United States in and for the District of Pennsylvania in the Third Circuit, in my office, and of the proceedings thereon.

L.S.

Witness my Hand and the Seal of the said Circuit Court, at Philadelphia, this twenty-ninth day of January, A. D. 1831, and in the fifty-fifth year of the Independence of the said United States.

D. CALDWELL,
Clk. Circ. Ct.

THE UNITED STATES OF AMERICA, *vs.* JAMES PORTER, ALIAS JAMES MAY, AND GEORGE WILSON, } Circuit Court of the United States of America. Indictment. April Sessions, 1830. No. 9. Robbery of Mail.

And now, to wit, this twentieth day of October, A. D. 1830, the District Attorney of the United States moves the Court for sentence upon the defendant, George Wilson: But the Court suggesting the propriety of enquiring as to the effect of a certain pardon, understood to have been granted by the President of the United States to the defendant since the convic-

tion on this indictment, although alleged to relate to a conviction on another indictment, the case postponed till the 21st day of October, 1830.

And now, to wit, this 21st day of October, 1830, the Counsel for the defendant, George Wilson, appear before the Court, and on behalf of the said defendant, waive and decline any advantage or protection which might be supposed to arise from the pardon referred to: And thereupon the following questions or points were argued by the District Attorney of the United States, upon which the opinions of the Judges of the said Circuit Court were opposed:

First. That the pardon referred to (pro ut the same) is expressly restricted to the sentence of death passed upon the defendant, under another conviction, and as expressly reserves from its operation the conviction now before the Court.

Second. That the prisoner can, under this conviction, derive no advantage from the pardon, without bringing the same judicially before the Court, by plea, motion, or otherwise.

And now, to wit, this twenty-first day of October, 1830, the defendant, George Wilson, being in person before the Court, was asked by the Court whether he had any thing to say why sentence should not be pronounced for the crime whereof he stands convicted in this particular case, and whether he wished in any manner to avail himself of the pardon referred to: And the said defendant answered in person, that he had nothing to say, and that he did not wish in any manner to avail himself, in order to avoid sentence in this particular case, of the pardon referred to.

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And the said Judges, being so opposed in opinion upon the points or questions above stated, the same were then and there, at the request of the District Attorney of the United States, stated, under the direction of the Judges, and ordered by the Court to be certified under the seal of the Court to the Supreme Court, at their next session thereafter, to be finally decided by the said Supreme Court: And the Court being further of opinion that other proceedings could not be had in the said case without prejudice to its merits, did order that the same be continued over to the next sessions of the Court.

HENRY BALDWIN,
JOS. HOPKINSON.

ANDREW JACKSON,

PRESIDENT OF THE UNITED STATES OF AMERICA,

To all who shall see these Presents, GREETING:

Whereas a certain George Wilson has been convicted before the Circuit Court of the United States for the Eastern District of Pennsylvania, of the crime of robbing the Mail of the United States, and has been sentenced by the said Court to suffer the penalty of death on the 2d day of July next; and whereas the said George Wilson has been recommended as a fit subject for the exercise of Executive clemency by a numerous and respectable body of petitioners, praying for him a remission of the sentence of death, inasmuch as, in such case, sentence of imprisonment for twenty years may yet be pronounced against him on the Indictments to which he has pleaded guilty in